IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 156 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE D.P.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

GOVINDBHAI KESHAVLAL PATEL

Versus

STATE OF GUJARAT

Appearance:

1. Criminal Revision Application No. 156 of 2001

MR MAHENDRA K PATEL for Petitioner No. 1

Mr B D Desai, APP for Respondent No. 1

MR HN BRAHMBHATT for Respondent No. 2

CORAM : MR.JUSTICE D.P.BUCH

Date of decision: 17/01/2002

ORAL JUDGEMENT

This is an application under section 397 of the Code of Criminal Procedure, 1973 (for short, 'the Code')

for discharge of the petitioner from offences punishable under section 365, 366 and 376 of IPC in Sessions Case No.362/99 pending before the Sessions Court at Mehsana. It appears that a FIR was filed against the present petitioner on 3.7.1999 at 22.10 hours for the aforesaid offences. The Investigating Agency undertook investigation and submitted charge sheet. After charge sheet, the case was committed to the Court of Sessions, as the offence punishable under section 376 was exclusively triable by the Sessions Court. The learned Addl.Sessions Judge, Mehsana framed charge for the aforesaid offence on 20.9.2000. Certified copy of the charge is placed at page 12. Feeling aggrieved by the said order of framing of charge against the petitioner, the revisional petitioner has preferred this revision application before this court contending there that there was material before the Court for framing charge and, therefore, the petitioner be discharged.

2. Rule was issued and in response to the service of Rule, Mr B D Desai, learned APP appears for respondent no.1-State whereas Mr H N Brahmbhatt, learned Advocate appears for the original informant Kapilaben Babulal Patel. I have heard the learned Advocates for the parties and have perused papers of this revision application. Learned Advocate for the petitioner has taken me through the FIR filed by the informant Kapilaben Patel which shows that the husband of the petitioner had died before some years and she, along with her two children, has been staying with her father-in-law. It is also stated by her that the present petitioner being in service in the Postal Service in the same village, is known to her. It is further contended in the FIR that the petitioner used to come to the residence where she was residing frequently. That thereafter, she needed some money and, therefore, she requested the petitioner to lend an amount of Rs.5,000/-. She has further stated that on the next day i.e. on 23.5.1999, she had received a telephonic message from the petitioner that arrangement was made for the said amount and, therefore, she should go to Himatnagar and collect the amount. She has further stated that she went to Himatnagar and the petitiioner was standing behind the bus stand by the side of a jeep car. That the petitioner called her to the said jeep car and told her to count the said amount. She was also required to sit in the said jeep car. While she was counting the said amount given by the petitioner, according to the informant, the petitioner, occupied his position in the first seat of the jeep and directed the driver to drive the jeep. Thereafter, the petitioner had shown a revolver and a knife to the informant and had

threatened her. Thereafter the petitioner had taken her to different places and committed rape on her.

3. It seems that there are some statements of witnesses saying that the informant had not made any complaint to them during the span when she stayed at Halol. One Mafatlal Parmar and his wife Urmilaben Parmar have given such statement before the Police Investigating Officer. On the strength of such statements, Mr Mahendra Patel, learned advocate argued that this shows that the informant had an opportunity to complain to these persons about the rape committed by the petitioner, yet the informant has not informed these persons about it.

4. This would amount to weighing of evidence which is not permissible at the stage of framing of charge. It is then contended that three further statements of the informant have been recorded by the Police Officer and they contend contradictory version. Again, this would amount to weighing of evidence which is not permissible at the stage of framing of charge.

5. It is also contended that though the informant has stated in the FIR that the telephonic message was received on 23.5.99, the statement of Hansaben shows that the telephonic message was received on 22.5.99. This would again be a matter of appreciation of material at the time when the parties go for evidence. Therefore, even this so-called contradiction cannot help the present petitioner at the stage of framing of charge.

6. In above view of the matter, when the FIR discloses the offence, prima facie, then in that event, the petitioner being the original accused cannot ask for his discharge. It is to be seen that the petitioner had not applied for his discharge before the trial court before framing of charge. Any way, there is material on record to show that the petitioner had committed the aforesaid offence. Charge sheet has been filed against him and after going through the material on record, the learned Judge had framed charge against the petitioner for the aforesaid offence. In that view of the matter, it cannot be said that the case has been totally fabricated and no material has been placed before the Court for framing of charge. When there is some material against the petitioner for framing charge against him, sufficiency of material cannot be gone into at this stage.

7. In above view of the matter, there is no merit in this revision application and the same is ordered to be

dismissed.

17.1.2002 [D P Buch, J.]
msp